



**Government of the District of Columbia
Office of the Chief Financial Officer**

Office of Tax and Revenue

TAX PRACTITIONER INSTITUTE

Office of General Counsel

January 12, 2023

District False Claims Act

The False Claims Amendment Act of 2019

1) Increased the monetary award cap for OTR informants from 10% to 30% of the tax proceeds collected; and



2) Allows certain actions brought in DC Superior Court by the OAG or *qui tam* plaintiffs under the DC False Claims Act that relate to taxation.





District False Claims Act

§ 2–381.02 was amended as follows:

[The DC False Claim Act] shall not apply to claims, records, or statements made pursuant to those portions of Title 47 that refer or relate to taxation, unless:

(1)(A) The claim, record, or statement was made on or after **January 1, 2015**; and

(B) The District taxable income, District sales, or District revenue of the person against whom the action is being brought equals **\$1 million for any taxable year** subject to any action brought pursuant to this subchapter, and the **damages pleaded in the action total \$350,000 or more**; or

(2) The claim, record, or statement was made on or after January 1, 2015, and **relates to the classification of real property as vacant or blighted** pursuant to Chapter 31A of Title 42.



District False Claims Act

§ 2–381.03 was amended to add the following provisions:

- (a-1) When a *qui tam* plaintiff brings an action pursuant to subsection (b) of this section and the matter relates to taxation, the Attorney General for the District of Columbia shall consult with [OTR] about the complaint.
- ***(c)(3) No person may bring an action pursuant to subsection (b) of this section that is based upon allegations or transactions that relate to taxation and are the subject of an existing investigation, audit, examination, ruling, agreement, or administrative or enforcement activity by [OTR].***
- (h) In any proceeding under this subchapter, [OTR] shall not be required to produce tax information, or other information from which tax information can be inferred, if the production thereof would be a violation of federal law.



Income and Franchise Tax Update



OTR Legal Notices



☐ **“SALT CAP Work-Arounds”**

- OTR TAX NOTICE 2022-03, District Treatment of Pass-through Entities Taxes Paid to Other Jurisdictions (3/31/2022)



☐ **Expiration of Temporary Nexus Relief**

- OTR TAX NOTICE 2022-06, COVID-19 Franchise Tax Nexus (6/6/2022).



☐ **Student Loan Forgiveness**

- OTR TAX NOTICE 2022-07, Taxability of Student Loan Forgiveness in the District (10/13/2022).



Income Tax Updates

- **Pass Through Entity Tax Credit**
 - OTR Tax Notice 2022-03 announced OTR's policy to allow resident individual taxpayers to claim a credit for taxes by a pass-through entity to another jurisdiction.
 - The pass-through entity tax must be akin to an individual net income tax and not a prohibited tax type under D.C. Code § 47-1806.04(a)

<https://otr.cfo.dc.gov/node/1590361>



Domicile & Residency

☐ Types of Residents

- Definition of Domiciliary
- Definition of Statutory Resident
 - *Maintaining Place of Abode*
 - *Temporary Absences*

☐ Change of Domicile

- International Relocations

☐ Out of State Credits

☐ Definition of Part-Year Resident

☐ Reciprocal Agreements



RECENT CHANGES TO THE DC EITC

(D.C. Code § 47-1806.04(f))

	TY 2021	TY 2022	TY 2023	TY 2024	TY 2025	TY 2026
CREDIT AMOUNT						
Taxpayers <u>with</u> Qualifying Children	40% of Federal EITC	70% of Federal EITC)			85% of Federal EITC	100% of Federal EITC
Non-custodial parent taxpayers ("Schedule N filers")						
Taxpayers <u>without</u> Qualifying Children	100% of Federal EITC maximum (with DC phase-out formulas adjusted for inflation)					
PAYMENT SCHEDULE						
Taxpayers <u>with</u> Qualifying Children	1 payment	TRANSITION YEAR: If total refund greater than \$600, 1 payment = 40% of Federal EITC and remainder paid in 11 montly intallments (1 payment if refund is \$600 or less)		12 monthly payments if total refund greater than \$1,200 (1 refund payment if refund is \$1,200 or less)		
Non-custodial parent taxpayers ("Schedule N filers")	1 payment					
Taxpayers <u>without</u> Qualifying Children						
Part-year residents						
TAXPAYER STATUS						
Taxpayers who are nonresident aliens (no SSN)	Coupled with disqualification under IRC § 32(c)(1)(D)		Eligible provided that taxpayer meets all other requirements of IRC § 32			



Real Property Tax Update



Homeowner Benefits

- **Homestead Deduction (General)**
- **Homestead Deduction for Veterans**
- **Senior Citizen and Disabled Property Tax Relief & 102% Tax Cap**





Mandatory E-Filing & Overpayments

Mandatory Electronic Filing

- 9 DCMR § 370 mandates e-filing of forms via www.mytax.dc.gov
- Includes: homestead deduction; senior citizen and disabled tax relief; claims for refund; requests for certificates of taxes; penalty and interest waiver requests; exemption applications; exempt property use reports; and division of lot requests.
- Taxpayer may seek a waiver of the e-filing requirement for limited programs, at discretion of OTR.



Statute of Limitations for Refunds

- Taxpayers must claim refunds of overpayments within 3 years from the date that the tax was paid.

Tax Sale Update

- Annual Sale to be held **July 18 & July 19, 2023**
- Location TBD
- No discount on lien amount
- Registration typically opens 2 weeks prior to the sale and continues until the last day of the sale
- Tax Sale Seminars (late June) - attendance is highly encouraged
- DC Tax Sale operates on theory of *Caveat Emptor*
- Tax Sale FAQ's <https://otr.cfo.dc.gov/page/real-property-tax-sale>



Personal Property vs. Leasehold Improvements



Collections Update



Certificate of Clean Hands



SIMPLER. FASTER. SAFER.





Certificate of Clean Hands

§ 47–2862. Prohibition against issuance of license or permit.

(a) Notwithstanding any other provision of law, the District government shall not issue or reissue a license or permit to any **applicant** for a license or permit if the **applicant**:

(1) [Various fines, penalties and interest owed to various District agencies];

* * *

(2) Owes the District more than **\$100 in past due taxes**; or

* * *

(8) **Has failed to file required District tax returns[.]**



Certificate of Clean Hands

FAQ: Who is the “Applicant”?

- An individual, business, or other entity that applies for the license or permit; and
- Any person that owns a **majority interest** in the business or other entity (except for publicly-traded corporations)

FAQ: What is a “majority interest”?

- **Corporations:** more than 50% of the total combined voting power of all classes of stock of the corporation or more than 50% of the total value of all of the corporation
- **Partnerships and UB's:** more than 50% of the total interest in the capital or profits of a partnership or entity treated as a partnership
- **Trusts:** more than 50% of the beneficial interest in a trust



Certificate of Clean Hands

FAQ: How does a taxpayer which is a disregarded entity demonstrate it has not failed to file a DC franchise tax return?

A: Beginning with tax year 2020, OTR created **Schedule K-Disregarded Entities** to the D-20 and D-30 for a taxpayer to disclose its disregarded entities whose income is included on the taxpayer's return.



Certificate of Clean Hands

FAQ: How does an unincorporated business with less than \$12,000 in gross income demonstrate it has not failed to file a DC unincorporated business franchise tax return?

A: Beginning with tax year 2022, an unincorporated business with less than \$12,000 in gross receipts has the option to file a “**D-30N, Affidavit of Gross Income in Lieu of D-30 Unincorporated Business Franchise Tax Return**”.



Officer Assessments



Officer Assessments

- What tax types can result in an officer assessment?

“Trust Fund Taxes”

Withholding tax



Sales tax



Officer Assessments

- **What is actually being assessed?**
 - An officer assessment is not for the tax (or interest or penalty) owed by the business.
 - An officer assessment is for a stand-alone penalty.
 - The amount of the penalty is equal to the tax, including interest and penalties thereon, not collected or paid for which the business is liable.

Officer Assessments

- **Who is liable for the penalty?**
 - An officer or director of a corporation
 - A general partner of a partnership
 - A similar principal of a business

Officer Assessments

- **What is the statute of limitations for making an officer assessment?**
- The penalty shall not be imposed after the expiration of the period for [the final assessment] of the underlying tax liability.
 - In general, **3 years** after the return was filed.
 - **No limitations** if:
 - No return was filed for the underlying tax liability;
 - A false or fraudulent return for the underlying liability was filed with the intent to evade tax; or
 - There was a willful attempt in any manner to defeat or evade the underlying tax.



Officer Assessments

- **What is OTR's process for making an officer assessment?**
 1. Final assessment against a business
 2. No payment from the business despite reasonable collection efforts
 3. Revenue officer works up case against the officer
 4. Supervisor approval
 5. Notice of Intent to Assess Responsible Officer Penalty
 6. Notice of Final Assessment of Responsible Officer Penalty
 7. Collection efforts against the officer

Officer Assessments

- **Can an officer assessment be made against multiple individuals for the full amount of unpaid liability?**
 - Yes. The amount of officer assessment should be for the full amount of the unpaid liability. However, if the business or another officer makes a payment, all officers should be credited with that payment.



Officer Assessments

- **What are the officer's appeal rights?**
- **Offer in Compromise (Doubt as to Liability)**
 - Individual disputes that they are an officer.
- **Penalty Waiver Request**
 - Individual agrees that they are an officer but believes they can establish reasonable cause for their failure to pay.
- **D.C. Superior Court**
 - Must be filed 6 months from the date of the Notice of Final Assessment of Responsible Officer Penalty.
 - Individual must fully pay the assessed penalty before the appeal.



OGC Contact Information

Bazil Facchina

Assistant General Counsel
202-442-6371 (office)
bazil.facchina@dc.gov

Robert McKeon

Deputy Chief Counsel
202-442-6513 (office)
robert.mckeon@dc.gov

Elissa Borges

Assistant General Counsel
202-442-6680 (office)
elissa.borges@dc.gov

William Bowie

Senior Counsel
202-442-6512 (office)
william.bowie@dc.gov

Alan C. Levine

Chief Counsel
202-442-6510 (office)
alan.levine@dc.gov

Jon-Michael Olson

Assistant General Counsel
202-442-6462 (office)
jon-michael.olson@dc.gov

Nirmail Dhaliwal

Senior Tax Advisor
202-442-6632 (office)
nirmail.dhaliwal@dc.gov

Aaishah Hashmi

Corporate Tax Counsel
202-442-6508 (office)
aaishah.hashmi@dc.gov

Sonia Kamboh

Assistant General Counsel
202-442-4063 (office)
sonia.kamboh@dc.gov

Q & A